IMANAKA KUDO & FUJIMOTO A Limited Liability Law Company

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Attorneys for Respondents HTH Corporation, Pacific Beach Corporation, and Koa Management, LLC

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

HTH CORPORATION, PACIFIC BEACH	CASE NOS. 37-CA-7311
CORPORATION, and KOA	37-CA-7334
MANAGEMENT, LLC, a SINGLE	37-CA-7422
EMPLOYER, dba PACIFIC BEACH HOTEL,	37-CA-7448
,	37-CA-7458
and	37-CA-7476
	37-CA-7478
	37-CA-7482
	37-CA-7484
	37-CA-7484
	37-CA-7488 37-CA-7537
	37-CA-7550
LITTLE CORPORATIONS 11 - PACIFIC PRACTY	37-CA-7587
HTH CORPORATION dba PACIFIC BEACH HOTEL	
and	37-CA-7470
KOA MANAGEMENT, LLC dba PACIFIC BEACH HOTEL	
and	37-CA-7472

PACIFIC BEACH CORPORATION dba PACIFIC BEACH HOTEL

and

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142

37-CA-7473

RESPONDENTS' ANSWERING BRIEF IN RESPONSE TO INTERNATIONAL LONGSHORE AND WAREHOUSE UNION LOCAL 142'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S SUPPLEMENTAL DECISION ON REMAND; EXHIBITS "A" – "C"; CERTIFICATE OF SERVICE

RESPONDENTS' ANSWERING BRIEF IN RESPONSE TO INTERNATIONAL LONGSHORE AND WAREHOUSE UNION LOCAL 142'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S SUPPLEMENTAL DECISION ON REMAND

The instant matter addresses an issue that was severed and remanded by the National Labor Relations Board ("Board") in a Decision and Order dated June 14, 2011. Specifically, the Board remanded this matter to the Chief Administrative Law Judge to decide whether to reopen the record in order to determine whether any remedies should be awarded to employees who formerly worked at the Shogun Restaurant ("Shogun") at the Pacific Beach Hotel ("Hotel").

Procedural Background

On September 7, 2011, following the remand by this Board, Associate Chief Administrative Law Judge Mary M. Cracraft ("ALJ Cracraft") held a conference call with the parties in this matter to address whether it was necessary to reopen the record in this case for the purposes of determining whether former Shogun employees were entitled to any remedies.

On August 3, 2011, ALJ Cracraft issued a Briefing Order, and the parties subsequently filed briefs in support of their positions on whether the record in this case

should be reopened. The Counsel for the General Counsel ("GC") and Respondents both submitted that the matter should *not* be reopened. The GC specified that it did not seek remedies for the Shogun employees during the hearing before the Administrative Law Judge ("ALJ"), and in fact, no charge had been filed regarding the closing of Shogun. Additionally, the GC also clarified that although a charge was filed against Respondents at one point regarding a failure to bargain over the effects of the closure of Shogun, that charge was eventually withdrawn.

Similarly, Respondents submitted that the record should not be reopened, because the Complaint in this case did not allege an unfair labor practice for the Shogun employees and the GC had disclaimed and waived any remedies for the Shogun employees during the hearing before the ALJ. Additionally, Respondents also noted that the Charging Party in this case, the International Longshore and Warehouse Union, Local 142 ("ILWU"), never objected to the GC's disclaimer of remedies for the Shogun employees, and never argued that the former Shogun employees were entitled to any remedies during the hearing or in their post-hearing briefs. ¹

The ILWU submitted a brief and argued that this matter should be reopened so that the parties can submit further evidence regarding the Shogun employees.

On October 14, 2011, ALJ Cracraft issued her Supplemental Decision on Remand ("ALJSD"), and ruled that the Shogun employees were not entitled to a remedy under the circumstances of this case. ALJ Cracraft also ruled that it was "unnecessary to reopen the record because no additional facts need to be elicited in order to decide the issue on remand." See ALJSD at 2:5-7. In reaching her decision, ALJ Cracraft noted that the

¹ The first time the ILWU ever sought remedies for the former Shogun employees was in its exceptions to the ALJ's decision.

Complaint did not allege unilateral closure of Shogun, and did not allege an unlawful layoff of the Shogun employees. *Id. at 2:9-11*. In addition, ALJ Cracraft noted that no underlying unfair labor practice charge was filed alleging a failure to give the Union notice and an opportunity to bargain over the closure of Shogun. *Id. at 2:11-13*. Finally, ALJ Cracraft noted that the GC had stated that there was no allegation that the Shogun employees were entitled to a remedy. *Id. at 13-35*.

On November 14, 2011, ILWU filed exceptions to ALJ Cracraft's Supplemental Decision.

ALJ Cracraft's Decision Should Be Left Undisturbed

In its exceptions, the ILWU made three arguments in its attempt to have this Board overturn the decision of ALJ Cracraft. As discussed more fully below, however, each of these arguments lacks merit. Therefore, Respondents request that the decision issued by ALJ Cracraft be affirmed by the Board.

A. Scope Of The Complaint Did Not Include Shogun Employees

As ALJ Cracraft clearly explained in her decision, the Complaint did not allege any violation with regards to the Shogun employees. In addition, the GC specifically stated that he was not seeking any remedy for the Shogun employees. Finally, there was no pending unfair labor practice charge regarding the Shogun employees.

In its brief in support of exceptions, however, the ILWU spent a great deal of time trying to argue that the closure of the Shogun can be read into paragraph 11(c) of the Complaint, which alleged that Respondents terminated certain unnamed employees at the Hotel. See ILWU Brief in Support of Exceptions at 7, 27-34. What the ILWU's brief completely ignored, however, was that the GC unequivocally stated during the hearing

that the Shogun employees were not included in the allegations found in paragraph 11(c) of the Complaint. More specifically, on the very pages of the transcript appended to the ILWU's own brief, the GC stated that while some of the employees listed in Respondents Exhibit 18^2 were entitled to remedy, the Shogun employees [listed from 23 - 33] were not. Therefore, the ILWU's assertion that paragraph 11(c) of the Complaint included an allegation related to the Shogun employees is completely wrong.

Accordingly, the Shogun employees are not entitled to remedy, because the Complaint never alleged a violation of the National Labor Relations Act with regards to the Shogun employees. *See Sumo Container Station, Inc.*, 317 NLRB 383 (1995). Specifically, in *Sumo Container*, the Board ruled that an ALJ improperly found that the respondent had committed an unfair labor practice where the facts alleged giving rise to the unfair labor practice had not been alleged or argued by the General Counsel. Thus, the Board noted that "[u]nder these circumstances, we cannot find that the [r]espondent was on notice that these [allegations] would be sought by the General Counsel or considered by the Board as separate violations of the Act." *Id. at 384*.

In the present case, there are no set of facts in the Complaint specifically alleging that Respondents committed any unfair labor practices with regards to the Shogun employees. In addition, the ILWU's claim that paragraph 11(c) can be interpreted to include the Shogun employees is completely fallacious, because the GC has already clarified that the allegations contained in paragraph 11(c) do not include the Shogun employees. Accordingly, under *Sumo Container*, the Shogun employees are not entitled

² Attached to the ILWU's brief as Appendix 2.

to remedy because the scope of the Complaint did not include an allegation of a violation regarding the Shogun employees.

B. Under The Circumstances, The Shogun Employees Are Not Entitled To Remedy.

The ILWU has also argued that the "record is void of any communication of the General Counsel's intent [not to seek remedies for the Shogun employees] prior to the final hearing offered at the end of receipt of evidence." See ILWU's Brief in Support of Exceptions at 34. This claim is also factually incorrect.

In fact, not only did the GC evince an intention *not* to pursue remedies for the Shogun employees, the ILWU itself also evinced such an intention. Specifically, before the hearing in this matter even commenced, the ILWU filed an unfair labor practice charge in Case No. 37-CA-7478, which alleged that certain individuals were not rehired by Respondents during a rehiring process conducted in October 2007. The original version of the charge alleged that 37 different individuals were not rehired, including 11 individuals who formerly worked at Shogun. *See Exhibit A.*³ The charge was amended by the ILWU twice, however, and the names of the Shogun employees were removed from the charge. *See Exhibits B and C.*⁴ All three versions of the charge were signed by the ILWU's attorney. *See Exhibits A-C.*

The Complaint drafted by the GC was based on the amended charge, and did not allege that Respondents committed any unfair labor practices with regards to the former

³ Exhibit A was previously attached to Respondents Brief Regarding Re-Opening of the Record, attached to the ILWU's Brief in Support of Exceptions at Appendix 7. The ILWU, however, did not include the attachment to Respondents brief with its filing.

⁴ Exhibits B and C were also previously attached to Respondents Brief Regarding Re-Opening of the Record, attached to the ILWU's Brief in Support of Exceptions at Appendix 7. The ILWU, however, did not include the attachments to Respondents brief with their filing.

Shogun employees. Clearly the drafting of the unfair labor practice charges by the ILWU and the drafting of the Complaint occurred before the hearing in this case even commenced. Thus, before the hearing even began, both the GC and ILWU evinced an intention to *not* pursue unfair labor practice charges regarding the Shogun employees.

At the end of the hearing, the GC confirmed that it was not seeking any remedies for the Shogun employees. Specifically, the GC informed the ALJ that he "did not allege that the Shogun employees were entitled to remedy." See Transcript of Hearing at 2324:3-5. In clarifying this statement, the GC stated that "individuals numbered 23 through 33 on [Respondents Exhibit 18] were not entitled to remedy." Id. at 2324:14-15. This position by the GC was nothing new; rather, it simply confirmed that the Shogun employees were not a part of the unfair labor practice charges filed by the ILWU, and were therefore not a part of the Complaint. Additionally, the ILWU never objected to disclaimer of remedies for the Shogun employees.

Contrary to the position taken by the ILWU, the GC's disclaimer of remedies for the Shogun employees precludes the imposition of remedies against Respondents with regards to the former Shogun employees. See Holder Construction Co., 327 NLRB 326 (1998). Specifically, in Holder Construction, the Board rejected the General Counsel's exceptions to an ALJ's decision not to provide a remedy requiring the respondent to offer reinstatement to two discriminatees. Id. at 326. In that case, the General Counsel tried to argue that the Board had authority under Section 10(c) of the Act to order reinstatement, even though such a remedy was never requested by the General Counsel. Id.

In rejecting this argument by the General Counsel, the Board noted that the General Counsel had disclaimed any intent to seek reinstatement for the two

discriminatees. *Id.* Accordingly, the Board rejected the General Counsel's request for an order reinstating the two discriminatees. *Id.*

In the present case, the GC clearly and unequivocally disclaimed any remedies for the Shogun employees. In fact, the GC expressly stated that the Shogun employees "were not entitled to remedy." The ILWU never objected to this position by the GC.

In its post-hoc exceptions, the ILWU is arguing that *Holder Construction* is inapposite to the present case because the charging party did not file exceptions to the decision of the administrative law judge in that case. What the ILWU completely failed to mention, however, were that exceptions were indeed filed in that case – they were filed by the General Counsel. Additionally, the General Counsel's exceptions in that case were very similar to the exceptions filed by the ILWU in the present case. Therefore, the fact that the exceptions were filed by the General Counsel in that case, instead of the charging party, is of no consequence, because the issue of whether the Board should grant remedies was still being addressed by the Board. As discussed above, the Board ruled that such remedies were not warranted.

In addition, one major similarity between *Holder Construction* and the present case is that – like the ILWU in this case – the charging party in *Holder Construction* also did not object to the General Counsel's disclaimer of remedies. By not objecting to the GC's disclaimer of such remedies, the ILWU gave the appearance that it agreed with the GC that the Shogun employees were not entitled to remedy – only to later change its mind in its post-hoc exceptions and attempt to request a "second bite at the litigation apple." *See ALJSD at 4:34-35*.

Under Section 101.10 of the NLRB's Statements of Procedure, the ILWU had the "power to call, examine, and cross-examine witnesses and to introduce evidence into the record" during the hearing before the ALJ. Thus, it is ironic that the ILWU's brief in support of its exceptions argued that "[n]othing precluded Respondents from presenting evidence during the trial" regarding the Shogun employees. The onus was not on Respondents to present evidence regarding the Shogun employees; rather, the onus was on the GC or the ILWU to (a) properly allege a violation regarding the Shogun employees and (b) present facts in support of such an allegation. The ILWU fulfilled neither of these two duties in this case. Rather, instead of pursuing the alleged unfair labor practice in the proper way, it is now trying to reopen the record to litigate a matter that had never been alleged in the first place.

Additionally, the ILWU's reliance in *Schnadig Corp.*, 265 NLRB 147 (1982), to argue that this Board can fashion a remedy for the Shogun employees – despite the waiver of such remedies by the GC – is misplaced and misleading. More specifically, *Schnadig* does not stand for the proposition that the Board can award remedies even in a case where the General Counsel disclaims such remedies. Rather, *Schnadig* simply dealt with a situation where the Board modified a remedy that was already issued by the administrative law judge in that case. In that case, there was no disclaimer of remedies, and no dispute as to whether the alleged discriminatees were entitled to remedy. Thus, the present case is vastly different from *Schnadig*, because (a) the GC expressly and unequivocally disclaimed any remedies for the Shogun employees and (b) the ILWU never objected to the disclaimer of such remedies. Under *Holder Construction*, even

assuming the Shogun employees would be entitled to some sort of remedy, such a

remedy would be precluded because the GC has already disclaimed such remedy.

Accordingly, because the Complaint did not allege a violation of the Act

regarding the former Shogun employees and the GC stated that those individuals were

not entitled to remedy, ALJ Cracraft correctly ruled that no remedy should be issued for

the Shogun employees. See White Coffee Corp., 261 NLRB 1025, 1026 (1982)("Since

counsel for the General Counsel did not seek to amend the complaint in this regard, and

indeed specifically stated that a remedy was not being sought with respect to the unfair

labor practice strikers, the Administrative Law Judge erred in implicitly finding that

[r]espondent violated Section 8(a)(3) and (1) by not reinstating the strikers after an

unconditional offer to return to work and in providing a corresponding remedy.").

Finally, the ILWU's exceptions bring up somewhat a moot point, because even if

this matter were remanded, the GC has stated he had no further evidence or argument to

present on this matter. See ILWU's App. 8-4.

Conclusion

For all the foregoing reasons, Respondents request that this Board affirm the

decision of ALJ Cracraft.

DATED:

Honolulu, Hawaii, November 28, 2011

IMANAKA KUDO & FUJIMOTO

WESLEY M. FUMMOTO

RYAN E. SANADA

Attorneys for Respondents

HTH CORPORATION, PACIFIC BEACH

CORPORATION, and KOA

MANAGEMENT, LLC

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UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER



FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE	IN THIS SPACE	27 5
Case	Date Filed	
37-CA-7478	November 23.	2007

INSTRUCTIONS ·

File an original and 4 copies of this charge with NLRB Regional Director for

the region in which the alleged unfair labor practice occurred or is occurring.		
EMPLOYER AGAINST WHOM CHARGE IS BROUGHT		
HTH Corporation dba Pacific Beach Hotel; Koa Manager	mant II C. Daoifia Daoah	b. Number of workers employed
Corporation (as a single Employer)	ment LLC; racinc beach	450 (+)
c. Address (street, city, state, ZIP code)		
2490 Kalakaua Avenue	d. Employer Representative Robert Minicola	e. Telephone No.
	Regional Vice-President	808-922-1233 Fax
Honolulu, Hawaii 96815		
f. Type of Establishment (factory, mine, wholesaler, etc.) Hotel	g. Identify principal product or servi Hotel/Guest Services	
h. The above-named employer has engaged in and is engaging in unfa subsections (1), (3) and (5) of the National Labor Relations Act, and affecting commerce within the meaning of the Act.	ir labor practices within the meaning of these unfair labor practices are unfai	f section 8(a), r practices
Basis of the Charge (set forth a clear and concise statement of the factors)	acts constituting the alleged unfair labo	or practices)
Commencing on or about October 12, 2007 and continuing	g thereafter, HTH Corp. dba P	acific Beach Hotel/(aka Pacific
Beach Corp. dba Pacific Beach Hotel)/(pka KOA Manage	ement LLC) the Joint-Employe	er with PBH Management LLC
began the discriminatory collective action of refusing to c	offer employment/continued en	nployment to the following
Union supporters:	• •	
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3. Full name of party filing charge (if labor organization, give full name,		
International Longshore and Warehouse Union, Local 142	including local name and number)	
4a. Address (street and number, city, state and ZIP code)		4b. Telephone No.
451 Atkinson Drive, Honolulu, HI 96814		(808) 949-4161
, , , , , , , , , , , , , , , , , , , ,		(808) 955-1915 Fax
5. Full name of national or international labor organization of which it is	an affiliate or constituent unit (to be fill	ed in when charge is filed
by a labor organization.		
International Longshore an		
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I declare that I have read the above charge and that the Danny I. Vasconcellos, Esq. (statements are true to the best of my	knowledge and belief.
By Survey VI	Title: A	Attorney
Signature of representative or person making charge		•
Address Takahashi Vasconcellos & Covert	Telephone No. 526-3003	Date
345 Queen Street, Room 906, Honolulu, HI 96813	531-9894 Fax	November 23, 2007

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

Continued from Page 1

	<u>Name</u>	Danartmant
1.	Bumanglag, Ruben	<u>Department</u> Maintenance
2.	Hatanaka, Todd	F & B (Bartender)
3.	Kanaiaupuni, Keith Kapena	Bell
4.	Miyashiro, Darryl	F & B (Banquet/Wait)
5.	Recaido, Virginia	Housekeeping
6,	Villanueva, Rhandy	Housekeeping Housekeeping
7.	Revamonte, Virbina	F & B (Oceanarium)
8.	Ballesteros, Jr., Teodoro	F & B (Shogun)
9.	Fernando, Teodoro	
10.	Jose, Eddie	F & B (Stewarding) Landscaping
11.	kaluhiokalani, Delson	Bell
12.	Mulkey, Kohry	Bell
13.	Nagao, Garrick	Purchasing
14.	Pasalo, Maximiano	F & B (Banquet Runner)
15.	Valdez, Alejandro	Utility Steward
16.	Yadao, Willy	F & B (Banquet Runner)
17.	Arcalas, Erwin	Lead Cook
18.	Cajalne, Cesario	Cook III
19.	Dela Cruz, Dexter	Cook III
20.	Garay, Arthuro	Cook III
21.	Kinjo, Mitsuko	Waithelp
22.	Mizoguchi, Keizo	Cook II
23.	Beltran, Howard	F & B (Oceanarium)
24.	Cavin, Michael	F & B (Shogun)
25.	Madeira, keith	F & B (Oceanarium)
26.	Ngo, Neil Hung	F & B (Oceanarium)
27.	Wright Haidi	PBX
28.	Abella, Alfredo	Housekeeping
29.	Balisacan, Zenaida	Housekeeping
30.	Cabab, Imelda	F & B (Cashier)
31.	Cartez, Danilo	Utility Steward
32.	Eugenio, Sulpicio	Maintenance
33.	Ho, Marcus	Maintenance
34.	Paulino, Estrellita	Housekeeping
35.	Paz, Mark Anthony	Housekeeping
36.	Versoza, Judito	F & B (Bartender)
37.	Wagas, Dave	Utility Steward

HOWOL JUU HAWAII

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Continued from Page 2

The Employer discriminatory action based upon its "union animus" also included the unilateral action of offering/placement of the following union supporters to jobs/positions of a lesser status and/or lower wages (i.e. lower pay scale):

	Name	<u>Department</u>
1. 2. 3. 4. 5.	Araki, Derrin Kawahara, Linda Yamashiro, Shari Koyanagi, Mark Matsumura, Julie	From Head to Banquet Captain From Head to Banquet Captain From Banquet Captain to Waithelp From bell Captain to Sr. Bell Sergeant From O/C Oceanarium to O/C Banquet Cahier

By the above and other acts, the above-named Employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

The Union seeks interim 10(J) relief requiring the Employer to cease and desist from the above unlawful conduct, and also seeks an Order prohibiting the Employer from interfering with, restraining, or coercing the employees in the exercise of their rights guaranteed them by Section 7 of the Act, and prohibiting the Employer from otherwise committing further violations of the Act.

HAMAH TITILIONOH

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FORM EXEMPT UNDER 44 U.S.C. 3512

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Case	Date Filed
37-CA-7478	January 4, 2008

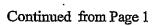
UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER

INSTRUCTION	NS	
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File an original and 4 coning of this charge with MI DD Posional Director for

the all original and 4 copies of this charge with NERS Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.					
1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT					
a. Name of Employer		1	o. Number of	workers er	nployed
HTH Corporation dba Pacific Beach Hotel; Koa Managen	nent LLC; Pacifi	c Beach	450 (+)		
Corporation (as a single Employer)				•	
c. Address (street, city, state, ZIP code)	d. Employer Repre		e. Telephone		
2490 Kalakaua Avenue	Robert Minicola		808 - 922-123	3	
Honolulu, Hawaii 96815	Regional Vice-Presid	lent	Fax		
f. Type of Establishment (factory, mine, wholesaler, etc.)	g. Identify principa	I product or service			
Hotel	Hotel/Guest Se				•
h. The above-named employer has engaged in and is engaging in unfai subsections (1), (3) and (5) of the National Labor Relations Act, and affecting commerce within the meaning of the Act. Basis of the Charge (set forth a clear and concise statement of the fact.)	these unfair labor pr	ractices are unfair pr	ractices		
•	14		-		
Commencing on or about October 12, 2007 and continuin					
Beach Corp. dba Pacific Beach Hotel)/(pka KOA Manage					
began the discriminatory collective action of refusing to o	ffer employment	/continued emp	loyment to	the follo	wing
Union supporters:					_
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3. Full name of party filing charge (if labor organization, give full name, International Longshore and Warehouse Union, Local 142	including local name	and number)			
4a. Address (street and number, city, state and ZIP code)			4b. Teleph		
451 Atkinson Drive, Honolulu, HI 96814			(808) 949		
					<u> </u>
Full name of national or international labor organization of which it is by a labor organization. Yetundal and Yellow and Yell	•	,	in when charg	je is filed	
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6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief					
Danny J. Vasconcellos, Esq.					
Ву	. <u>.</u>	_ Title: Att	orney		-
Signature of representative or person making charge	T-1-1	rnc 0000			. [
Address Takanashi Vasconceilos & Covert 345 Queen Street, Room 506, Honolulu, HI 96813	relepnone No.	526-3003 531-9894 Fax	Date January 4.	2008	
International Longshore and Warehouse Union, Local 142	including local name	and number)		M 3: 39	
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International Longshore an		en a			
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.					
Danny J. Vasconcellos, Esq.					1
	. <u>.</u>	_ Title: Att	orney		ŀ
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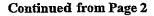
WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)



	<u>Name</u>	<u>Department</u>
1.	Bumanglag, Ruben	Maintenance
2.	— Hatanaka, Todd	F & B (Bartender)
3.	Kanaiaupuni, Keith Kapena	Bell
4.	Miyashiro, Darryl	F & B (Banquet/Wait)
5.	Recaido, Virginia	Housekeeping
6.	Villanueva, Rhandy	Housekeeping
7.	Revamonte, Virbina	F & B (Oceanarium)
8.	Ballesteros, Jr., Teodoro	F & B (Shogun)
9.	Fernando, Teodoro	F & B (Stewarding)
10.	Jose, Eddie	Landscaping
11.	Kaluhiokalani, Delson	Bell
12.	Mulkey, Kohry	Bell
13.	Nagao, Garrick	Purchasing · '
14.	Pasalo, Maximiano	F & B (Banquet Runner)
15.	Valdez, Alejandro	Utility Steward
16.	Yadao, Willy	F & B (Banquet Runner)
17.	Arcalas, Erwin	Lead Cook
18.	Cajalne, Cesario	Cook III
19.	Dela Cruz, Dexter	Cook III
20.	Garay, Arthuro	Cook III
21.	Kinjo, Mitsuko	Waithelp
22.	Mizoguchi, Keizo	Cook II
23.	Cavin, Michael	F & B (Shogun)
24.	Abella, Alfredo	Housekeeping
25.	Balisacan, Zenaida	Housekeeping
26.	Cartez, Danilo	Utility Steward
2 7.	Eugenio, Sulpicio	Maintenance
28.	Ho, Marcus	Maintenance
29.	Paulino, Estrellita	Housekeeping
30.	Paz, Mark Anthony	Housekeeping
31.	Versoza, Judito	F & B (Bartender)
32.	-Wagas, Dave	Utility Steward
	•	-

HONOLULU, HAWAII

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The Employer discriminatory action based upon its "union animus" also included the unilateral action of offering/placement of the following union supporters to jobs/positions of a lesser status and/or lower wages (i.e. lower pay scale):

• •	Name	<u>Department</u>
1.	Araki, Derrin	From Head to Banquet Captain
2.	Kawahara, Linda	From Head to Banquet Captain
3.	Yamashiro, Shari	From Banquet Captain to Waithelp
4.	Koyanagi, Mark	From bell Captain to Sr. Bell Sergeant
5.	Matsumura, Julie	From O/C Oceanarium to O/C Banquet Cahier

By the above and other acts, the above-named Employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

The Union seeks interim 10(J) relief requiring the Employer to cease and desist from the above unlawful conduct, and also seeks an Order prohibiting the Employer from interfering with, restraining, or coercing the employees in the exercise of their rights guaranteed them by Section 7 of the Act, and prohibiting the Employer from otherwise committing further violations of the Act.

NLRB SHR-PEGION 3

INTERNET FORM NURB-501 (2-08)



UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER
2ND. AMERICA

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FORM EXEMPT UNDER 44 U.S.C 3512

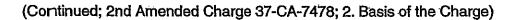
DO NOT WRITE	IN THIS SPACE
Case	Date Filed
37-CA-7478	August 29, 2008

INSTRUCTIONS:	2ND AMENDED		37-CA-7478	August 29, 2008	
File an original with NLRB Reg	ional Director for the region in which	h the alleged unfair labor pra	ctice occurred or is occurr	Ing.	
a Name of the latest at	1. EMPLOYER	AGAINST WHOM CHA	RGE IS BROUGHT		
a. Name of Employer	•		•	b. Tel. No. 808-922-1233	
HTH Corporation dba	·				
Corporation (as a single Employer)				c. Cell No.	
				f. Fax No.	
d. Address (Street, city, st	ate, and ZIP code)	e. Employer Represe	ntative		
2490 Kalakaua Aveni	ue, Honolulu, HI 96815	Robert Minicola		g. e-Mail	
	• .	Regional Vice-Pr	esident		
	•	· · ·	•	h. Number of workers employed 450+	
Type of Establishment (fine Hote)	actory, mine, wholesaler, etc.)	j. Identify principal pri Hotel/Guest Serv	oduct or service ices		
k. The above-named empl	oyer has engaged in and is engag	ing in unfair labor practices	within the meaning of se	ection 8(a), subsections (1) and (list	
subsections) (3), (5)				bor Relations Act, and these unfair labor	
practices are practices a within the meaning of th	affecting commerce within the mea	aning of the Act, or these un	nfair labor practices are u	Infair practices affecting commerce	
	et forth a clear and concise statem		the elleged unfair labors	analina 1	
Commencing on or a	hout October 12, 2007 and	continuing thereafter	UTH Com. dha Da	cific Beach Hotel/(aka Pacific	
Beach Com. dba Pad	cific Beach Hotel)//aka KOA	Management II C) th	n i n coip, uba rad	ith PBH Management LLC began	
the discriminatory co	llective action of refusing to	offer employment/co	itinued employer w	to the following Union supporters:	
•		oner ompio/monacon	minod ciripioyment	to the following Officer aupporters.	
	•		•		
(Continued on attached pages)					
3. Full name of party filing	g charge (if labor organization, give	full name including level			
1		•	iame end number)		
International Longsh	ore & Warehouse Union, Lo	ocal 142		•	
4a. Address (Street and no	umber, city, state, and ZIP code)			^{4b. Tel. No.} 808-949-4161	
451 Atkinson Drive					
Honolulu, HI 96814				4c. Cell No.	
<u> </u>		•		^{4d. Fax No.} 808-955-1915	
].					
	•			4e. e-Mail	
			•		
5. Full name of national of organization)	r international labor organization o	of which it is an affiliate or c	onstituent unit (to be fille	d in when charge is filed by a labos	
Internation	onal Longshore & Warehous	se Union		FE 12 7	
	6. DECLARAT	iohi		Tel. No.	
I declare that I have read to	he above charge and that the statem	ion ents are true to the best of m	knowledge and belief.	80ई-526-3003	
!	16 N (T) /				
Ву	Vous De 1	anny J. Vasconcellos	, Attorney	Office, if any, Cell No.	
(signature of representati	ive or person making charge)	(Print/type name and title o	•		
	\ ·			Fax No. 808 531-9894	
] '			0.000.00	e-Mail — — —	
345 Queen St	reet, Rm. 506, Honolulu, Hi	96813	8/29/08	-	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



	<u>NAME</u>	DEPARTMENT
1.	Bumanglag, Ruben	Maintenance
2.	Hatanaka, Todd	F & B (Bartender)
3.	Kanaiaupuni, Keith Kapena	Bell
4.	Miyashiro, Darryl	F & B (Banquet/Wait)
5.	Recaido, Virginia	Housekeeping
6.	Villanueva, Rhandy	Housekeeping
7.	Revamonte, Virbina	F & B (Oceanarium)

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

The Union seeks interim 10(j) relief requiring the Employer to cease and desist from the above unlawful conduct, and also seeks an Order prohibiting the Employer from interfering with, restraining, or coercing the employees in the exercise of their rights guaranteed them by Section 7 of the Act, and prohibiting the Employer from otherwise committing further violations of the Act.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

HTH CORPORATION, PACIFIC BEACH	CASE NOS. 37-CA-7311
CORPORATION, and KOA	37-CA-7334
MANAGEMENT, LLC, a SINGLE	37-CA-7422
EMPLOYER, dba PACIFIC BEACH HOTEL,	37-CA-7448
	37-CA-7458
Respondents,	37-CA-7476
	37-CA-7478
and	37-CA-7482
INTERNATIONAL LONGSHORE AND	37-CA-7484
	37-CA-7488
WAREHOUSE UNION, LOCAL 142,	37-CA-7537
Union.	37-CA-7550
Omon.	37-CA-7587
	37-CA-7470
	37-CA-7472
	37-CA-7473

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2011, the foregoing RESPONDENTS' ANSWERING BRIEF IN RESPONSE TO INTERNATIONAL LONGSHORE AND WAREHOUSE UNION LOCAL 142'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S SUPPLEMENTAL DECISION ON REMAND; EXHIBITS "A" – "C"; CERTIFICATE OF SERVICE was electronically filed with OFFICE OF EXECUTIVE SECRETARY in Washington, D.C., and a copy of the same was electronically served upon the following:

Thomas W. Cestare
Dale K. Yashiki
Trent K. Kakuda
Counsel for the Acting General Counsel
National Labor Relations Board, Subregion 37

thomas.cestare@nlrb.gov dale.yashiki@nlrb.gov trent.kakuda@nlrb.gov

Rebecca L. Covert, Esq.

RCover@hawaii.rr.com

Counsel for International Longshore and Warehouse Union, Local 142

DATED:

Honolulu, Hawaii, November 28, 2011

IMANAKA KUDO & FUJIMOTO

WESLEY M. FUMMOTO

RYAN E. SANADA

Attorneys for Respondents

HTH CORPORATION, PACIFIC BEACH

CORPORATION, and KOA

MANAGEMENT, LLC

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